TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 287.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SMITH.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 287.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SMITH.

APPEAL FROM THE COURT OF CLAIMS.

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And the plaintiff avers that he has never found or recovered said five hundred dollars, nor any part thereof; that his said clerk saw said money and blank accounts flying from said open satchel before
3 plaintiff got possession of the same, and made every effort to gather up all said papers and money, and did gather all money and blank accounts except the said five-hundred-dollar package, and that five hundred dollars of government funds in his possession, and for which he was then and there and ever since has been responsible as such paymaster, was lost without fault or negligence on his part.

And the plaintiff avers that on said 27th day of June, A. D. 1869, he notified Major E. D. Judd, chief paymaster military district of Texas, and that within forty days he forwarded, through said Major Judd, to the chief paymaster of the Army, notice and full evidence of said loss, and requested to be relieved therefrom; and that on the 11th day of August, A. D. 1869, the Paymaster-General of the Army rendered his decision upon the case by an endorsement on the letter of said Major Judd of the date July 26, 1869, which letter, and the endorsements thereon, are hereto attached, marked "Exhibit B," and made a part of this petition.

And the plaintiff avers that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government.

Wherefore the plaintiff prays for a judgment or decree of this court, that the loss aforesaid was without fault or negligence on his part, and that there shall be allowed and carried to his credit in his account on the books of the Treasury of the United States by proper the officers thereof the sum of five hundred dollars so lost by him as aforesaid.

Washington, D. C., March 16, 1878.

SANBORN & KING,
Claimant's Attorneys.

DISTRICT OF MINNESOTA, *ss:*

4 William Smith, being first duly sworn, deposes and says that he is the claimant in the above-entitled action; that he has read the foregoing petition and knows the contents thereof; that no assignment or transfer of said claim, or any part thereof or interest therein, has been made, and that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

WM. SMITH.

Sworn to and subscribed before me this 13th day of April, A. D. 1878.

[SEAL.] J. N. CARDOZO,
U. S. Commissioner, District of Minnesota.

Post-office address of plaintiff: "Care of Adjutant-General U. S. Army, Washington, D. C."

Post-office address of attorneys: "Sanborn & King, Washington, D. C."

EXHIBIT A.

"HEADQUARTERS FIFTH MILITARY DISTRICT,
"STATE OF TEXAS,
"*Austin, Texas, June* 1, 1869.

[Special orders No. 129.]

[Extract.]

* * * * * * *

"XI. Brevet Lieutenant-Colonel W. Smith having reported to these headquarters under the requirements of General Orders No. 106, current series, from headquarters of the Army, will proceed to the following posts and pay the troops there stationed: Galveston, Indianola, Columbus, Brenham, Bryan, Helena, and Livingston.

"Having completed this duty, he will proceed to San Antonio, and report by letter to the chief paymaster of this district.

* * * * * * *

"By order of Brevet Major-General J. J. Reynolds.

"CHAS. E. MORSE,
"*Acting Assistant Adjutant-General.*

"Official.
"(Signed) C. E. MORSE,
"*Aid-de-Camp.*

"A true copy.
"(Signed) W. P. GOULD.
"*Major and Paymaster U. S. Army.*"

EXHIBIT B.

"HEADQUARTERS FIFTH MILITARY DISTRICT,
"CHIEF PAYMASTER'S OFFICE,
"*Austin, Texas, July* 26, 1869.

"Brevet Major-General B. W. BRICE,
"*Paymaster-General:*

"SIR: On the 18th day of June, Colonel William Smith, paymaster, wrote me from Galveston, that he was about to start up the Trinity River with the sum of $13,685 to pay the posts of Livingston, Bryan, and Brenham.

"On the 27th of June he wrote me from Brenham, stating that he met with an accident at Bryan by which he lost the sum of five hundred dollars public funds. His clerk attempted to get on the train while in motion with a satchel of vouchers and funds, which accidentally broke open, the contents dropping out on the ground. After all the vouchers and money had been recovered which could be found and his cash balanced it fell short five hundred dollars. He will forward affidavits in regard to the loss.

"I am, very respectfully, your obedient servant,
"(Signed) E. D. JUDD,
"*Chief Paymaster.*

"A true copy.
"(Signed) GEORGE L. FEBIGER.
"*Paymaster U. S. A.*"

The above is endorsed as follows:

"6067.

"These papers are all respectfully returned to Major Wm.
6 Smith, through Major Judd, as likely to be useful to Major S. in prosecuting hereafter his claim for relief before one of the only two tribunals possibly competent to give it, to wit, Congress or the Court of Claims.

"I have implicit confidence in the character of Major Smith, and when the time comes will cheerfully render every assistance in my power to effect his release from the accidental loss incurred.

"Meantime Major S., in the rendering of his official accounts, must carry the amount as part of 'balance on hand to be accounted for.'

"(Signed) B. W. BRICE.
"*P. M. G.*

"P. M. G. O., *Aug.* 11, 1869.

"A true copy of endorsements.
"(Signed) GEORGE L. FEBIGER,
"*Paymaster U. S. A.*"

7 II. *General Traverse.—Filed May* 3, 1878.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

8 III. *Plea of limitation.—Filed May* 3, 1878.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain his suit against the defendants, for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

9 IV. *Findings of fact and conclusions of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. In June, 1869, the claimant was and still is a paymaster in the Army.

II. On the 25th June, 1869, while the claimant was traveling to pay troops, he lost from a railroad train in motion near Bryan, Texas, a package of money containing $500. The loss was caused by the accidental falling of the claimant's clerk, and was without fault or negligence on the part of the claimant, who was transporting the money in

the manner in which paymasters' funds are ordinarily transported in like circumstances, and exercising reasonable diligence in the care of the same.

III. The claimant reported the loss through his superior officer to the Paymaster-General, who thereupon issued to him the following order:

"These papers are all respectfully returned to Major Wm. Smith, through Major Judd, as likely to be useful to Major S. in prosecuting hereafter his claim for relief before one of the only two tribunals possibly competent to give it, to wit, Congress or the Court of Claims.

"I have implicit confidence in the character of Major Smith, and when the time comes will cheerfully render every assistance in my power to effect his release from the accidental loss incurred.

"Meantime Major S., in the rendering of his official accounts, must carry the amount as part of 'balance on hand to be accounted for.'

"(Signed) B. W. BRICE,
"*P. M. G.*

"P. M. G. O., *Aug.* 11, 1869."

IV. In pursuance of the foregoing order the claimant carried the amount of the before-described lost funds on his accounts as money in his possession, noting, however, on his accounts-current the loss in the following form:

Paymaster Wm. Smith, U. S. A., in account-current with the United States for the months of September and October, 1871, under official bond dated April 13, 1871.

Date.		Pay of Army.	Mileage.	General expenses.	Clothing of soldiers.	Paymaster's collections.	Amount.	Remarks.
	Total balance as per last account-current	$.....	.....	.....	.....	.....	$21, 743 76	$——— of this amount being suspended vouchers.
	Total debits.....	$.....	.....	.....	.....	.....	.....	
1871. October 31	Disbursed as per abstract of payments.	$1, 224 98	.....	.....	273 88	.....	1, 498 86	
September 18	By transfer to Maj. G. L. Febiger, P. M. U. S. A.....	16, 000 00	.....	.....	.....	.....	16, 000 00	Actual money balance as follows: With asst. treas'r New York, in safe for paying troops..... $3, 744 90 Lost June 25, '69, at Bryan, Texas..... 500 00 $4, 244 90
	Total credits.....	$.....	.....	.....	.....	.....	17, 498 86	
	Total balance to be accounted for.....	$.....	.....	.....	.....	.....	4, 244 90	
	As follows { Actual money balance.... Balance of suspensions...	.....	.....	.....	.....	.....	.....	

I certify that the above is a true account of all public moneys received by me not heretofore accounted for; that the disbursements have been faithfully made; and that my balance and its disposition at the close of the period stated, are correctly set forth.

Stated at New Orleans, La., this 22d day of November, 1871.

(Signed) WM. SMITH,
Paymaster, U. S. A.

(Indorsed:) Account-current for September and October, 1871. Wm. Smith, paymaster U. S. A. App'rn for fiscal year ending June 30, 1871.

11 V. On the 13th July, 1871, the Paymaster-General issued the following order:

"WAR DEPARTMENT,
"PAYMASTER-GENERAL'S OFFICE,
"*Washington, July* 13, 1871.

"Major WM. SMITH,
"*Paymaster U. S. A., New Orleans, La.:*

"SIR: After you have completed your payments on the muster of Aug. 31, 1871, you will, in accordance with par. 13 of cir. 76, P. M. G. O., transfer to your chief paymaster the balance of the appropriation of the last fiscal year that may remain in your hands, including the sum of five hundred (500) dollars claimed by you to have been lost at Bryan, Tex., June 25, 1869.

"This will not prejudice any claim that you may hereafter present for relief to the Court of Claims, under act of May 9, 1866.

"Very respectfully, your ob'd't servant,

"B. W. BRICE,
"*Paymaster-General U. S. A.*"

In pursuance of this order the claimant paid over to his chief paymaster at New Orleans, on the 20th December, 1871, all of the moneys remaining in his hands, and likewise $500 of his own funds representing and taking the place of the lost funds before described.

VI. The loss of $500 before described has not been allowed to the claimant by the proper accounting-officers of the Treasury as a credit in the settlement of his accounts.

And upon the foregoing findings of fact the court decides pro forma, for the purpose of an appeal, as conclusion of law:

The claimant is entitled to a decree directing the proper accounting-officers of the Treasury to allow to the claimant as a credit in the settlement of his accounts for funds lost at Bryan, Texas, June 25, 1869, the amount of $500.

V. *Opinion of the court.*

NOTT, J., delivered the opinion of the court:

This is a suit brought by a paymaster in the Army for relief under the disbursing officers' act (Rev. Stat., § 1059, 1062) in regard to a package of government funds lost without fault or negligence on his part, but for which he has been held responsible by the Paymaster-General.

The loss occurred on the 25th June, 1869; the claimant was ordered to make good the loss out of his own funds on 13th July, 1871; and he did so on the 20th December, 1871. But this suit for relief was not brought until the 18th April, 1878. More than six years consequently had elapsed from the time of the loss or from the time when the claimant was held responsible for the loss before the suit was brought; and it presents the question whether the statute of limitations is a bar to the relief given by the disbursing officers' act. The point has also been made by the counsel for the defendants that the suit will not lie after a disbursing officer has complied with his superior officer's order and paid over the money or made good the loss.

The primary fact in the case upon which it must stand, if it can stand at all, is that accounts in the Treasury are never closed. In neither the legal nor mercantile sense of the term is an account between the

government and one of its officers ever "finally adjusted"; nor is his official bond ever canceled or surrendered. This practice is general; has been invariable since the organization of the Treasury, and
12 is applicable to all officers as well as to those intrusted with the disbursement of the public funds. Thus, when it was determined in 1872 that judicial salaries were not subject to the deduction of the income-tax, the judges of the Supreme Court, like disbursing officers, were able to have their accounts at the Treasury restated, and the new balance which appeared owing to them (that is to say, the money which had been withheld from their salaries) paid over to them. In precisely the same manner, and with precisely the same effect, the Treasury would restate this officer's account were there a decree to relieve him from this loss, and the credit being given to him in pursuance of the decree, whatever balance might then appear due would be paid to him. The balance would not necessarily be the amount of the decree. It might be augmented by other credits or diminished by new-found debits; but the item decreed by the court would be allowed in the account, and the balance of the account, whatever it might be, would be paid to the officer.

A second fact constituting a part of the same Treasury system is that the most stringent measures are provided by law to compel the immediate payment of balances found to be due to the government. Thus in this case the pay of the claimant might have been stopped. He might have been court-martialed and dismissed the service for refusing to pay over the money as ordered; and an action might have been brought upon his bond wherein he would have been precluded by statute from setting up as a defense the matters on which he now relies for relief. (Army Reg., 1860, § 1350; Tillou's Case, 6 Wallace R., 484.)

Not identical with but somewhat analogous to this proceeding is the statutory provision (Rev. Stat., § 1063) which allows the head of an executive department to transmit a claim to this court for adjudication without the assent of the claimant; and where with no voluntary action on his part the court acquires jurisdiction. In such cases it has been held that the statute of limitations cannot be set up as a bar to the action. (Winnisimmet Company's Case, 12 C. Cls. R., 319.)

It is manifest that a system so convenient, so effective, and so expedient was in the minds of the lawmakers when the statute was framed. The statute was not intended to change or circumscribe the system, but
J. R. to be auxiliary to it. Cases were occurring wherein such credits should be given to disbursing officers. The Treasury had no means for ascertaining the facts or determining the questions
J. R. necessarily involved. To hold the officers responsible for losses
J. R. without fault would be a wrong; to compel the government to proceed against them and allow them to show their losses in defense
J. R. would be inconvenient, circuitous, and expensive. Congress
J. R. therefore devised the exceedingly simple and effective remedy of enabling this court to come to the aid of the Treasury by determining in such cases whether a certain item should or should not be credited to an officer in his account. This auxiliary remedy ingrafted upon the system left undisturbed the summary remedies whereby the government could proceed against defaulting officers and secure the immediate collection of balances due prima facie. It at the same time left untrammeled and uncurtailed the flexible system whereby, at the latest moment, the accounting officers could charge the disbursing officer with a newly-discovered debit, and deduct it from the very item allowed by a decree of the court. It was not the purpose of Congress,

on the one hand, to postpone the collection of balances apparently due to the government, nor, on the other hand, to allow the accounting officers by their promptitude to take away from a disbursing officer the very remedy which Congress gave to him by the statute.

13 Rightly construed, the statute becomes a harmonious part of the system of Treasury accounts, and that system, as we have seen, is one that admits of the rectification of mistakes at any time, and the entry of debits or credits in any stage of the proceedings—a system which no more puts the claimant to his action to recover back this money than it put the judges of the Supreme Court to their action to recover money erroneously charged to them as a tax.

But, while it is evident that the proceeding under the statute is an auxiliary remedy of the accounting system, and while it is also clear that, in the administration of the accounting system, an account is always liable to be restated, and in that way always open for correction, it is by no means certain that the right to the remedy will not be barred by the statute of limitations. The language of the statute, "Every claim against the United States cognizable by the Court of Claims shall be forever barred" (Rev. Stat., §1059), is comprehensible enough to include this class of cases; and the same reasons against unlimited delay exist which would be applicable to an action founded on the same transactions to recover back money had and received. Nevertheless the Supreme Court has expressed a doubt in a recent case (Clark's Case, 96 U. S. R., 37) whether this proceeding to correct an account is a claim against the United States within the meaning of the statute. "The petition of plaintiff in this suit does not, in the just sense of the word, set forth a claim against the United States. It sets up a defense to a claim of the United States against the plaintiff," says the Supreme Court. And it adds: "The statute, if applicable to this class of cases at all, did not begin to run until" the claimant was held responsible for the loss.

If both parties here stood upon an equal footing with respect to the right of appeal, we should deem it to be our duty to consider and decide this question now. But, in view of the fact that the claimant has no right of appeal, we should hardly feel, if we reached a conclusion adverse to him, at liberty to render a judgment that could not be reviewed in the face of the doubt which the appellate court has pointedly expressed. Accordingly, without expressing an opinion upon that point, we decide pro forma, for the purposes of an appeal, that the statute of limitations does not bar the claimant's action.

A decree will be entered in the usual form directing the proper accounting-officers of the Treasury to allow to the claimant, as a credit in the settlement of his accounts, for funds lost at Bryan, Texas, June 25, 1869, the sum of $500.

14 VI. *Final judgment.*

At a Court of Claims held at the Capitol, in the city of Washington, on the 10th day of February, A. D. 1879, judgment was ordered to be entered, as follows:

On due consideration of the premises, the court find that the petitioner, William Smith, was paymaster in the military service of the United States during the month of June, 1869, and that as paymaster there came into his hands the sum of five hundred dollars, and that on the 25th day of June, 1869, the said sum of five hundred dollars was lost without fault or neglect on his part while in the line of his duty,

and do therefore adjudge and decree that the said sum of five hundred dollars be allowed to the said William Smith by the proper accounting-officer of the Treasury as a credit in the settlement of his accounts as paymaster.

15 VII. *Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on 10th February, 1879, in favor of claimant, the defendants, by their Attorney-General, on the 9th day of April, 1879, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

A. D. R.
Filed April 9, 1879.

And now, to wit, April 9, 1879, it is ordered,
That the appeal be allowed, as prayed for.

16 In the Court of Claims.

WILLIAM SMITH
vs.
THE UNITED STATES. } No. 11937.

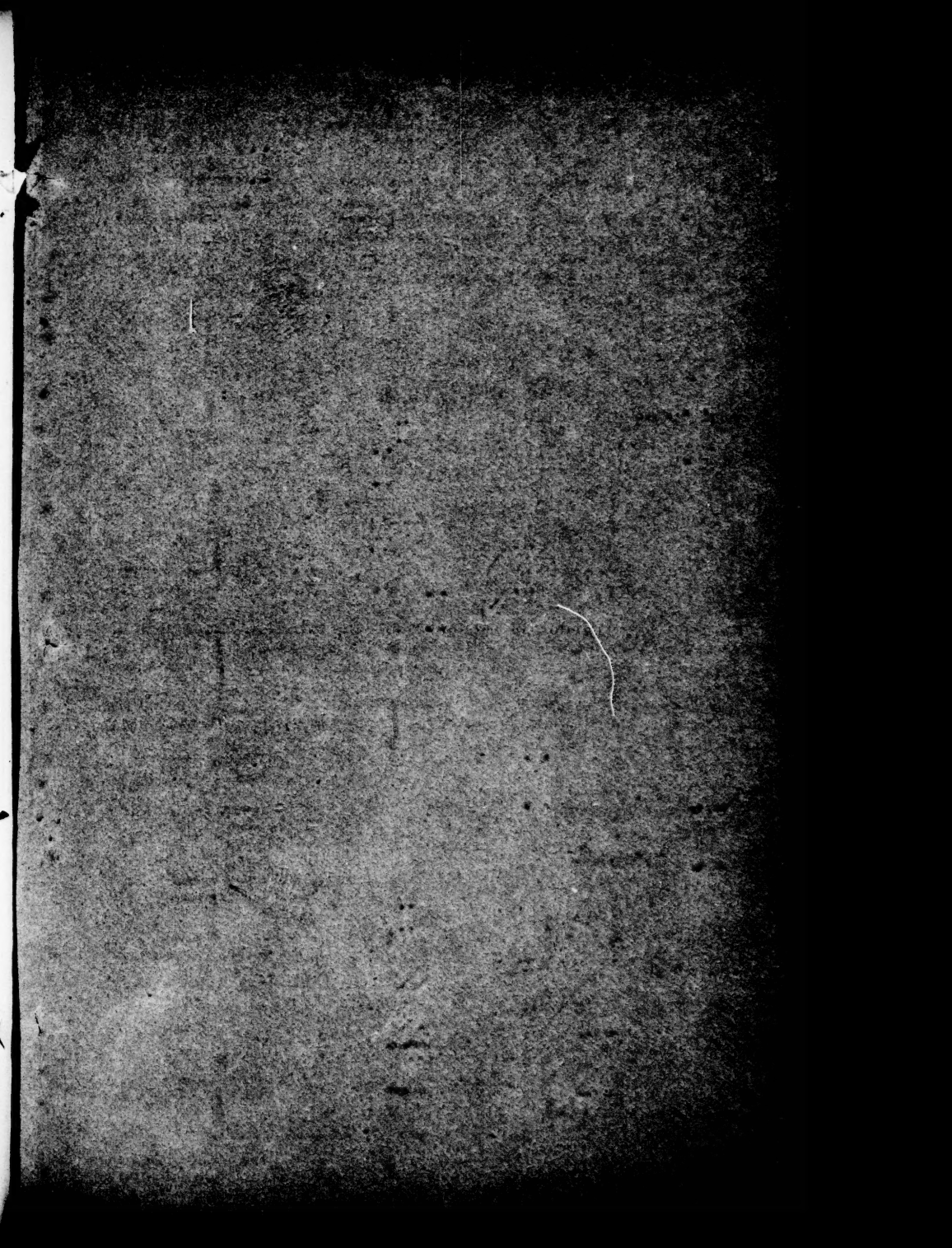
I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court, and the conclusion of law thereon; of the opinion of the court; of the final judgment; of the application by the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this seventeenth day of September, A. D. 1879.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 287. The United States, appellants, vs. William Smith. Court of Claims. Filed 4th October, 1879.



OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, CLERK

In the Supreme Court of the United States.

THE UNITED STATES
v.
SMITH. } No. 287.

BRIEF FOR THE UNITED STATES.

In the Opinion of the learned court below, the facts in this case (stated at large in ***Findings***, folios 9, &c.) are thus briefly given:

> This is a suit brought by a paymaster in the Army for relief under the disbursing officers' act (Rev. Stat., sections 1059, 1062), in regard to a package of government funds lost without fault or negligence on his part, but for which he has been held responsible by the Paymaster-General. The loss occurred on the 25th of June, 1869; the claimant was ordered to make good the loss out of his own funds on the 13th July, 1871; and he did so on the 20th December, 1871. But this suit for relief was not brought until the 18th April, 1878.

This case, therefore, differs materially from that of Clark (94 U. S., 74, and 96 U. S., 37), for in the latter case (see 94 U. S.) suit was brought April 12, 1873, upon a loss which had happened April 6, 1865, but which had not been ordered to be made good by Clark at the Treasury until November 6, 1871, and the question was

whether the statute of limitations began to run from the time of the loss incurred, or from that at which the claim to be credited therefor was finally rejected.

This court held substantially (96 U. S.) that so long as the case was one in which virtually the United States were *actores* and the officer *reus* in adjusting the loss, the statute did not run, as that would not be a case of "a claim" within the meaning of section 1069 of the Revised Statutes.

In Clark's case the United States were not interested to question the right of the officer to *waive* the "*claim*," occasioned by his having *paid* the money into the Treasury, and *bring suit upon the special cause of action* given by the act of May 9, 1866 (14 Stat., 44, and Rev. Stat., secs. 1059, 1062), for in either case the statute of limitations would not apply. But here, where the "claim" is barred, *the incidental right* of correcting an item in an account, which if corrected would avoid the statute upon *the main question*, must itself be barred: Accessorius sequitur, non ducit, &c.

And such is the course of reasoning in the last paragraph of the Opinion of the court in 96 United States Reports.

I submit, therefore, that the Court of Claims erred in holding that the statute of limitations does not bar this action.

S. F. PHILLIPS,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1881.

THE UNITED STATES, Appellant,

vs.

WILLIAM SMITH, Respondent.

RESPONDENT'S BRIEF.

SANBORN & KING,
Attorneys for Respondent.

Pioneer Press.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1881.

THE UNITED STATES, Appellant,

vs.

WILLIAM SMITH, Respondent.

The only question in this case for the consideration and determination of the court is, whether section 1069 of the Revised Statutes, providing that every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court within six years after the claim first accrues, etc., is applicable to a suit or proceeding in that court by a disbursing officer of the United States, for relief from responsibility on account of losses by capture or otherwise while in the line of duty, without fault or negligence on his part, of government funds, for which such officer was and is held responsible, as provided in the third subdivision of section 1059.

1. The statute of limitations does not apply, for the reason that a claim for "relief from responsibility," etc., is not a claim against the United States within the meaning of that word as used in section 1069 of the statutes. The word claim, as used in that section, is synonymous with the same word in the first subdivision of section 1059, and in both places means the same thing as "cause of action," if the claim were against an individual, it means a right asserted to recover or receive money from the United States, which may be denied by the United States. It means a condition of things in which the claimant

and the United States are adversaries, and wherein if the claimant is successful, money is to be paid by the United States to him, as provided in section 1089 of the Revised Statutes, which extends to the same class and all of the claims referred to in section 1069.

2. A claim for relief from responsibility by an accounting officer is no more nor less than a claim by such officer to have his accounts settled in certain way or manner. Settlement in such manner has always been allowed, but Congress, until 1866, failed to delegate its power to settle such accounts to any other department of the government, but acted upon them itself directly. The vast increase in this class of accounts, in settlements that grew out of the War of the Rebellion, led to the act of 1866 whereby Congress delegated this power to the Court of Claims, without any limitation as to the time when the proceedings should be commenced or the accounts settled.

Statutes at Large, volume 14, page 44.

The Statute of Limitations, section 1069, was passed three years before that, vesting the Court of Claims with jurisdiction to relieve officers, &c., (Statutes at Large, vol. 12, p. 767,) and was limited to claims *against the United States* cognizable by the Court of Claims. While it may be conceded that the language is broad enough to cover all claims *against the United States*, of which the court then had or might thereafter be vested with jurisdiction, it cannot we submit be extended by implication to a class of claims IN FAVOR of the United States from which an officer claims to be relieved under the provisions of law. The only condition prescribed by law to vest the jurisdiction in this class of cases is that *such officer* "*was and is held responsible,*" that is, *now* held responsible at the commencement of the proceeding to have it allowed in his accounts.

3. Congress has not seen fit to limit the time within which actions may be brought by the United States to recover claims in their favor, and while that policy is pursued, a limitation upon the time within which a party charged with liability to

the United States would be unjust and unreasonable. In any event, if it had been the intention of Congress to limit the time within which an officer might proceed in the Court of Claims to have his accounts adjusted, would it not have provided in the law that he should proceed within a certain period after the time that his right to relief from responsibility accrued?

4. The evil sought to be remedied by a statute and the general purpose of a law should have great weight in its construction. In this case the evil sought to be remedied was, the *ex parte* manner of proceeding to obtain relief in the vast number of cases of this class pending before Congress, and the delay and difficulty in so large a body of obtaining relief at all, and discriminating between the meritorious and unmeritorious cases. To vest the power to determine this class of claims in the accounting officers would be to continue the *ex parte* method of examination and determination. Hence Congress has left the authority of the accounting officer where it stood as to examination and determination, and required of them simply to be governed in all this class of cases by the judgment and decree of the Court of Claims, and vested in that court jurisdiction to hear evidence and determine the question of responsibility for the guidance and in aid of the accounting officers, and hence this remedy is available to such an officer as long as his accounts are opened and unsettled. And the United States have the right to say just when they shall be closed, and hence the right to say when an officer must proceed to obtain relief from *nominal* responsibility.

The statute proceeds upon the theory that although there may be nominal responsibility and liability there may be none in fact or equitably. Hence, in this view, there is no claim by one party against the other at all—and the proceeding is not adversary as to any claim, but simply as to the right of the officer to be allowed a certain sum in the settlement of his accounts, and as long as the right to settlement exists the right to the benefit of this proceeding exists. There is no *claim* against the United States, and hence nothing upon which the

Statute of Limitations as it stands can operate. There is simply a claim to be relieved from responsibility, which Congress has provided that a certain tribunal in the judicial department shall pass upon, while certain other officers of the executive department shall pass upon all other accounts, while they must submit to the action and judgment of the judicial tribunal in this one class. Both these officers of the executive department and the tribunal of the judicial department may be passing upon these different classes of accounts of the same officer at the same time, and for the same purpose, to relieve the officer from nominal responsibility, and there can be no reason for applying a statute of limitations to one department that is not applied to the other.

5. Upon this question of limitations this case falls wholly within the rule established by the Supreme Court, in the case of the United States vs. Clarke, 96 United States, pp. 43–44, viz.: "That, until the accounting officers of the treasury had refused to recognize the sum lost as a valid credit in the settlement of his accounts, there was no occasion to apply to the Court of Claims; and the statute, if applicable to this class of cases at all, did not begin to run until then." For no accounting officer of the treasury has refused to allow him this $500.00, and the accounting officers of the Paymaster General's office had advised him that he should have every assistance in their power to effect his release from the accidental loss, when the time came; and that in this respect he should not be prejudiced by the transfer of all funds appearing to be in his hands to his chief paymaster.

The judgment of the Court of Claims should be affirmed:

1. As within the rule laid down in Clarke's case.

2. Because the six years' limitations is applicable only to claims against the United States, and not to claims for relief from responsibility in settlement of final accounts, whether the settlement is proceeding in the treasury or in the Court of Claims.

SANBORN & KING,
Attorneys for Respondent.

15 620

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 287.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SMITH.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 287.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SMITH.

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1 I. *Petition.*

Court of Claims.

WILLIAM SMITH
vs.
THE UNITED STATES. } No. 11937. Filed April 18, 1878. J. R.

The plaintiff in the above-entitled cause, respectfully complaining, shows to this honorable court and states, that he is a citizen of the United States, and is, and for more than ten years last past has been, a paymaster in the United States Army with the rank of major, and that during all said time he has been engaged in the discharge of the duties of his said rank and in the payment of such portions and the detachments of the army as directed and ordered by his superior officers.

And the plaintiff avers that heretofore, on the first day of June, A. D. 1869, he was ordered by Brevet Major-General J. J. Reynolds, commanding the military district of the State of Texas, to whose orders he was then subject, to proceed to the following posts and pay the troops there situated, viz: Galveston, Indianola, Columbus, Brenham, Bryan, Helena, and Livingston, all in the State of Texas, by a special order in writing then and there delivered to him, which order is hereto attached and marked "Exhibit A," and made a part of this petition.

And plaintiff further avers that in the discharge of the duty devolved upon him by said order he did on the ninteenth day of June, A. D. 1869, leave Galveston, Texas, taking with him thirteen thousand six hundred and eighty-five dollars of the public money of the United States, to enable him to make the payments designated in said order, and that
2 said funds were carried by him in the usual good leather hand-satchel ordinarily used for such purposes by paymasters of the Army, and was usually carried by George N. Smith, his clerk.

And the plaintiff avers that after he made payment to the troops at Livingston and Bryan he made a cash settlement and found that no error had occurred; and that on the morning of the 25th day of June, A. D. 1869, while he and said George N. Smith, his clerk, were getting aboard the train of cars to proceed to the next military station to pay the troops there, and said George N. Smith was carrying said satchel, with the remaining portion of said public moneys, said George N. Smith fell so as to be in danger of falling between the cars, which had just commenced to move forward, and was pulled off by a brakeman to save him from falling between the said cars and on to the track. That plaintiff was aboard the train and immediately missed his said clerk, and stepping to the rear of the rear car saw his clerk a short distance in the rear on the railroad track. That said clerk recovering from his first fall, had attempted to get on the rear platform of the car, and had thrown the satchel ahead of him with such force as to cause it to open, and then had failed to get aboard the train himself. That plaintiff recovered said satchel as soon as possible, and found that all the money was out of the same; that he made every effort to stop said train, but failed till it reached the first station about ten miles distant, when he immediately returned on a hand-car, having been absent about an hour, and when he returned he found said clerk had found and obtained all the money that had been lost out of said satchel except one package of five hundred dollars, and that all the money in said satchel was in packages of five hundred or one thousand dollars each.

And the plaintiff avers that he has never found or recovered said five hundred dollars, nor any part thereof; that his said clerk saw said money and blank accounts flying from said open satchel before
3 plaintiff got possession of the same, and made every effort to gather up all said papers and money, and did gather all money and blank accounts except the said five-hundred-dollar package, and that five hundred dollars of government funds in his possession, and for which he was then and there and ever since has been responsible as such paymaster, was lost without fault or negligence on his part.

And the plaintiff avers that on said 27th day of June, A. D. 1869, he notified Major E. D. Judd, chief paymaster military district of Texas, and that within forty days he forwarded, through said Major Judd, to the chief paymaster of the Army, notice and full evidence of said loss, and requested to be relieved therefrom; and that on the 11th day of August, A. D. 1869, the Paymaster-General of the Army rendered his decision upon the case by an endorsement on the letter of said Major Judd of the date July 26, 1869, which letter, and the endorsements thereon, are hereto attached, marked "Exhibit B," and made a part of this petition.

And the plaintiff avers that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government.

Wherefore the plaintiff prays for a judgment or decree of this court, that the loss aforesaid was without fault or negligence on his part, and that there shall be allowed and carried to his credit in his account on the books of the Treasury of the United States by proper the officers thereof the sum of five hundred dollars so lost by him as aforesaid.

Washington, D. C., March 16, 1878.

SANBORN & KING,
Claimant's Attorneys.

DISTRICT OF MINNESOTA, *ss:*

4 William Smith, being first duly sworn, deposes and says that he is the claimant in the above-entitled action; that he has read the foregoing petition and knows the contents thereof; that no assignment or transfer of said claim, or any part thereof or interest therein, has been made, and that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

WM. SMITH.

Sworn to and subscribed before me this 13th day of April, A. D. 1878.

[SEAL.] J. N. CARDOZO,
U. S. Commissioner, District of Minnesota.

Post-office address of plaintiff: "Care of Adjutant-General U. S. Army, Washington, D. C."

Post-office address of attorneys: "Sanborn & King, Washington, D. C."

EXHIBIT A.

"HEADQUARTERS FIFTH MILITARY DISTRICT,
"STATE OF TEXAS,
"*Austin, Texas, June* 1, 1869.

[Special orders No. 129.]

[Extract.]

* * * * * * *

"XI. Brevet Lieutenant-Colonel W. Smith having reported to these headquarters under the requirements of General Orders No. 106, current series, from headquarters of the Army, will proceed to the following posts and pay the troops there stationed: Galveston, Indianola, Columbus, Brenham, Bryan, Helena, and Livingston.

"Having completed this duty, he will proceed to San Antonio, and report by letter to the chief paymaster of this district.

* * * * * * *

"By order of Brevet Major-General J. J. Reynolds.

"CHAS. E. MORSE,
"*Acting Assistant Adjutant-General.*

"Official.
"(Signed) C. E. MORSE,
"*Aid-de-Camp.*

"A true copy.
"(Signed) W. P. GOULD.
"*Major and Paymaster U. S. Army.*"

EXHIBIT B.

"HEADQUARTERS FIFTH MILITARY DISTRICT,
"CHIEF PAYMASTER'S OFFICE,
"*Austin, Texas, July* 26, 1869.

"Brevet Major-General B. W. BRICE,
"*Paymaster-General:*

"SIR: On the 18th day of June, Colonel William Smith, paymaster, wrote me from Galveston, that he was about to start up the Trinity River with the sum of $13,685 to pay the posts of Livingston, Bryan, and Brenham.

"On the 27th of June he wrote me from Brenham, stating that he met with an accident at Bryan by which he lost the sum of five hundred dollars public funds. His clerk attempted to get on the train while in motion with a satchel of vouchers and funds, which accidentally broke open, the contents dropping out on the ground. After all the vouchers and money had been recovered which could be found and his cash balanced it fell short five hundred dollars. He will forward affidavits in regard to the loss.

"I am, very respectfully, your obedient servant,
"(Signed) E. D. JUDD,
"*Chief Paymaster.*

"A true copy.
"(Signed) GEORGE L. FEBIGER.
"*Paymaster U. S. A.*"

The above is endorsed as follows:

"6067.

"These papers are all respectfully returned to Major Wm.
6 Smith, through Major Judd, as likely to be useful to Major S. in prosecuting hereafter his claim for relief before one of the only two tribunals possibly competent to give it, to wit, Congress or the Court of Claims.

"I have implicit confidence in the character of Major Smith, and when the time comes will cheerfully render every assistance in my power to effect his release from the accidental loss incurred.

"Meantime Major S., in the rendering of his official accounts, must carry the amount as part of 'balance on hand to be accounted for.'

"(Signed) B. W. BRICE.
"*P. M. G.*

"P. M. G. O., *Aug.* 11, 1869.

"A true copy of endorsements.
"(Signed) GEORGE L. FEBIGER,
"*Paymaster U. S. A.*"

7 II. *General Traverse.—Filed May* 3, 1878.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

8 III. *Plea of limitation.—Filed May* 3, 1878.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain his suit against the defendants, for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

9 IV. *Findings of fact and conclusions of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. In June, 1869, the claimant was and still is a paymaster in the Army.

II. On the 25th June, 1869, while the claimant was traveling to pay troops, he lost from a railroad train in motion near Bryan, Texas, a package of money containing $500. The loss was caused by the accidental falling of the claimant's clerk, and was without fault or negligence on the part of the claimant, who was transporting the money in

the manner in which paymasters' funds are ordinarily transported in like circumstances, and exercising reasonable diligence in the care of the same.

III. The claimant reported the loss through his superior officer to the Paymaster-General, who thereupon issued to him the following order:

"These papers are all respectfully returned to Major Wm. Smith, through Major Judd, as likely to be useful to Major S. in prosecuting hereafter his claim for relief before one of the only two tribunals possibly competent to give it, to wit, Congress or the Court of Claims.

"I have implicit confidence in the character of Major Smith, and when the time comes will cheerfully render every assistance in my power to effect his release from the accidental loss incurred.

"Meantime Major S., in the rendering of his official accounts, must carry the amount as part of 'balance on hand to be accounted for.'

"(Signed) B. W. BRICE,
"*P. M. G.*

"P. M. G. O., *Aug.* 11, 1869."

IV. In pursuance of the foregoing order the claimant carried the amount of the before-described lost funds on his accounts as money in his possession, noting, however, on his accounts-current the loss in the following form:

Paymaster Wm. Smith, U. S. A., in account-current with the United States for the months of September and October, 1871, under official bond dated April 13, 1871.

Date.		Pay of Army.	Mileage.	General expenses.	Clothing of soldiers.	Paymaster's collections.	Amount.	Remarks.
	Total balance as per last account-current	$.....	.....	.....	.....	.....	$21,743 76	$—— of this amount being suspended vouchers.
	Total debits.....	$.....	.....	.....	.....	.....	.....	
1871. October 31	Disbursed as per abstract of payments.	$1,224 98	.....	.....	273 88	.....	1,498 86	
September 18	By transfer to Maj. G. L. Febiger, P. M. U. S. A.....	16,000 00	.....	.....	.....	.....	16,000 00	Actual money balance as follows: With asst. treas'r New York, in safe for paying troops.... $3,744 90 Lost June 25, '69, at Bryan, Texas..... 500 00 $4,244 90
	Total credits.....	$.....	.....	.....	.....	.....	17,498 86	
	Total balance to be accounted for.....	$.....	.....	.....	.....	.....	4,244 90	
	As follows { Actual money balance.... Balance of suspensions...	.....	.....	.....	.....	.....	.....	

I certify that the above is a true account of all public moneys received by me not heretofore accounted for; that the disbursements have been faithfully made; and that my balance and its disposition at the close of the period stated, are correctly set forth.

Stated at New Orleans, La., this 22d day of November, 1871.

(Signed)

WM. SMITH,
Paymaster, U. S. A.

(Indorsed:) Account-current for September and October, 1871. Wm. Smith, paymaster U. S. A. App'rn for fiscal year ending June 30, 1871.

11 V. On the 13th July, 1871, the Paymaster-General issued the following order:

"WAR DEPARTMENT,
"PAYMASTER-GENERAL'S OFFICE,
"*Washington, July* 13, 1871.

"Major WM. SMITH,
"*Paymaster U. S. A., New Orleans, La.:*

"SIR: After you have completed your payments on the muster of Aug. 31, 1871, you will, in accordance with par. 13 of cir. 76, P. M. G. O., transfer to your chief paymaster the balance of the appropriation of the last fiscal year that may remain in your hands, including the sum of five hundred (500) dollars claimed by you to have been lost at Bryan, Tex., June 25, 1869.

"This will not prejudice any claim that you may hereafter present for relief to the Court of Claims, under act of May 9, 1866.

"Very respectfully, your ob'd't servant,

"B. W. BRICE,
"*Paymaster-General U. S. A.*"

In pursuance of this order the claimant paid over to his chief paymaster at New Orleans, on the 20th December, 1871, all of the moneys remaining in his hands, and likewise $500 of his own funds representing and taking the place of the lost funds before described.

VI. The loss of $500 before described has not been allowed to the claimant by the proper accounting-officers of the Treasury as a credit in the settlement of his accounts.

And upon the foregoing findings of fact the court decides pro forma, for the purpose of an appeal, as conclusion of law:

The claimant is entitled to a decree directing the proper accounting-officers of the Treasury to allow to the claimant as a credit in the settlement of his accounts for funds lost at Bryan, Texas, June 25, 1869, the amount of $500.

V. *Opinion of the court.*

NOTT, J., delivered the opinion of the court:

This is a suit brought by a paymaster in the Army for relief under the disbursing officers' act (Rev. Stat., § 1059, 1062) in regard to a package of government funds lost without fault or negligence on his part, but for which he has been held responsible by the Paymaster-General.

The loss occurred on the 25th June, 1869; the claimant was ordered to make good the loss out of his own funds on 13th July, 1871; and he did so on the 20th December, 1871. But this suit for relief was not brought until the 18th April, 1878. More than six years consequently had elapsed from the time of the loss or from the time when the claimant was held responsible for the loss before the suit was brought; and it presents the question whether the statute of limitations is a bar to the relief given by the disbursing officers' act. The point has also been made by the counsel for the defendants that the suit will not lie after a disbursing officer has complied with his superior officer's order and paid over the money or made good the loss.

The primary fact in the case upon which it must stand, if it can stand at all, is that accounts in the Treasury are never closed. In neither the legal nor mercantile sense of the term is an account between the

government and one of its officers ever "finally adjusted"; nor is his official bond ever canceled or surrendered. This practice is general; has been invariable since the organization of the Treasury, and
12 is applicable to all officers as well as to those intrusted with the disbursement of the public funds. Thus, when it was determined in 1872 that judicial salaries were not subject to the deduction of the income-tax, the judges of the Supreme Court, like disbursing officers, were able to have their accounts at the Treasury restated, and the new balance which appeared owing to them (that is to say, the money which had been withheld from their salaries) paid over to them. In precisely the same manner, and with precisely the same effect, the Treasury would restate this officer's account were there a decree to relieve him from this loss, and the credit being given to him in pursuance of the decree, whatever balance might then appear due would be paid to him. The balance would not necessarily be the amount of the decree. It might be augmented by other credits or diminished by new-found debits; but the item decreed by the court would be allowed in the account, and the balance of the account, whatever it might be, would be paid to the officer.

A second fact constituting a part of the same Treasury system is that the most stringent measures are provided by law to compel the immediate payment of balances found to be due to the government. Thus in this case the pay of the claimant might have been stopped. He might have been court-martialed and dismissed the service for refusing to pay over the money as ordered; and an action might have been brought upon his bond wherein he would have been precluded by statute from setting up as a defense the matters on which he now relies for relief. (Army Reg., 1860, § 1350; Tillou's Case, 6 Wallace R., 484.)

Not identical with but somewhat analogous to this proceeding is the statutory provision (Rev. Stat., § 1063) which allows the head of an executive department to transmit a claim to this court for adjudication without the assent of the claimant; and where with no voluntary action on his part the court acquires jurisdiction. In such cases it has been held that the statute of limitations cannot be set up as a bar to the action. (Winnisimmet Company's Case, 12 C. Cls. R., 319.)

It is manifest that a system so convenient, so effective, and so expedient was in the minds of the lawmakers when the statute was framed. The statute was not intended to change or circumscribe the system, but
J. R. to be auxiliary to it. Cases were occurring wherein such credits should be given to disbursing officers. The Treasury had no means for ascertaining the facts or determining the questions
J. R. necessarily involved. To hold the officers responsible for losses
J. R. without fault would be a wrong; to compel the government to proceed against them and allow them to show their losses in defense
J. R. would be inconvenient, circuitous, and expensive. Congress
J. R. therefore devised the exceedingly simple and effective remedy of enabling this court to come to the aid of the Treasury by determining in such cases whether a certain item should or should not be credited to an officer in his account. This auxiliary remedy ingrafted upon the system left undisturbed the summary remedies whereby the government could proceed against defaulting officers and secure the immediate collection of balances due prima facie. It at the same time left untrammeled and uncurtailed the flexible system whereby, at the latest moment, the accounting officers could charge the disbursing officer with a newly-discovered debit, and deduct it from the very item allowed by a decree of the court. It was not the purpose of Congress,

on the one hand, to postpone the collection of balances apparently due to the government, nor, on the other hand, to allow the accounting officers by their promptitude to take away from a disbursing officer the very remedy which Congress gave to him by the statute.

13 Rightly construed, the statute becomes a harmonious part of the system of Treasury accounts, and that system, as we have seen, is one that admits of the rectification of mistakes at any time, and the entry of debits or credits in any stage of the proceedings—a system which no more puts the claimant to his action to recover back this money than it put the judges of the Supreme Court to their action to recover money erroneously charged to them as a tax.

But, while it is evident that the proceeding under the statute is an auxiliary remedy of the accounting system, and while it is also clear that, in the administration of the accounting system, an account is always liable to be restated, and in that way always open for correction, it is by no means certain that the right to the remedy will not be barred by the statute of limitations. The language of the statute, "Every claim against the United States cognizable by the Court of Claims shall be forever barred" (Rev. Stat., §1059), is comprehensible enough to include this class of cases; and the same reasons against unlimited delay exist which would be applicable to an action founded on the same transactions to recover back money had and received. Nevertheless the Supreme Court has expressed a doubt in a recent case (Clark's Case, 96 U. S. R., 37) whether this proceeding to correct an account is a claim against the United States within the meaning of the statute. "The petition of plaintiff in this suit does not, in the just sense of the word, set forth a claim against the United States. It sets up a defense to a claim of the United States against the plaintiff," says the Supreme Court. And it adds: "The statute, if applicable to this class of cases at all, did not begin to run until" the claimant was held responsible for the loss.

If both parties here stood upon an equal footing with respect to the right of appeal, we should deem it to be our duty to consider and decide this question now. But, in view of the fact that the claimant has no right of appeal, we should hardly feel, if we reached a conclusion adverse to him, at liberty to render a judgment that could not be reviewed in the face of the doubt which the appellate court has pointedly expressed. Accordingly, without expressing an opinion upon that point, we decide pro forma, for the purposes of an appeal, that the statute of limitations does not bar the claimant's action.

A decree will be entered in the usual form directing the proper accounting-officers of the Treasury to allow to the claimant, as a credit in the settlement of his accounts, for funds lost at Bryan, Texas, June 25, 1869, the sum of $500.

14 VI. *Final judgment.*

At a Court of Claims held at the Capitol, in the city of Washington, on the 10th day of February, A. D. 1879, judgment was ordered to be entered, as follows:

On due consideration of the premises, the court find that the petitioner, William Smith, was paymaster in the military service of the United States during the month of June, 1869, and that as paymaster there came into his hands the sum of five hundred dollars, and that on the 25th day of June, 1869, the said sum of five hundred dollars was lost without fault or neglect on his part while in the line of his duty,

and do therefore adjudge and decree that the said sum of five hundred dollars be allowed to the said William Smith by the proper accounting-officer of the Treasury as a credit in the settlement of his accounts as paymaster.

15 VII. *Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on 10th February, 1879, in favor of claimant, the defendants, by their Attorney-General, on the 9th day of April, 1879, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

A. D. R.
Filed April 9, 1879.

And now, to wit, April 9, 1879, it is ordered,
That the appeal be allowed, as prayed for.

16 In the Court of Claims.

WILLIAM SMITH
vs.
THE UNITED STATES. } No. 11937.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court, and the conclusion of law thereon; of the opinion of the court; of the final judgment; of the application by the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this seventeenth day of September, A. D. 1879.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 287. The United States, appellants, vs. William Smith. Court of Claims. Filed 4th October, 1879.

SUPREME COURT U. S.
FILED
APR 11 1882
JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1881.

THE UNITED STATES, Appellant,

vs.

WILLIAM SMITH, Respondent.

RESPONDENT'S BRIEF.

SANBORN & KING,
Attorneys for Respondent.

Pioneer Press.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1881.

THE UNITED STATES, Appellant,

vs.

WILLIAM SMITH, Respondent.

The only question in this case for the consideration and determination of the court is, whether section 1069 of the Revised Statutes, providing that every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court within six years after the claim first accrues, etc., is applicable to a suit or proceeding in that court by a disbursing officer of the United States, for relief from responsibility on account of losses by capture or otherwise while in the line of duty, without fault or negligence on his part, of government funds, for which such officer was and is held responsible, as provided in the third subdivision of section 1059.

1. The statute of limitations does not apply, for the reason that a claim for "relief from responsibility," etc., is not a claim against the United States within the meaning of that word as used in section 1069 of the statutes. The word claim, as used in that section, is synonymous with the same word in the first subdivision of section 1059, and in both places means the same thing as "cause of action," if the claim were against an individual, it means a right asserted to recover or receive money from the United States, which may be denied by the United States. It means a condition of things in which the claimant

and the United States are adversaries, and wherein if the claimant is successful, money is to be paid by the United States to him, as provided in section 1089 of the Revised Statutes, which extends to the same class and all of the claims referred to in section 1069.

2. A claim for relief from responsibility by an accounting officer is no more nor less than a claim by such officer to have his accounts settled in certain way or manner. Settlement in such manner has always been allowed, but Congress, until 1866, failed to delegate its power to settle such accounts to any other department of the government, but acted upon them itself directly. The vast increase in this class of accounts, in settlements that grew out of the War of the Rebellion, led to the act of 1866 whereby Congress delegated this power to the Court of Claims, without any limitation as to the time when the proceedings should be commenced or the accounts settled.

Statutes at Large, volume 14, page 44.

The Statute of Limitations, section 1069, was passed three years before that, vesting the Court of Claims with jurisdiction to relieve officers, &c., (Statutes at Large, vol. 12, p. 767,) and was limited to claims *against the United States* cognizable by the Court of Claims. While it may be conceded that the language is broad enough to cover all claims *against the United States,* of which the court then had or might thereafter be vested with jurisdiction, it cannot we submit be extended by implication to a class of claims IN FAVOR of the United States from which an officer claims to be relieved under the provisions of law. The only condition prescribed by law to vest the jurisdiction in this class of cases is that *such officer* "*was and is held responsible,*" that is, *now* held responsible at the commencement of the proceeding to have it allowed in his accounts.

3. Congress has not seen fit to limit the time within which actions may be brought by the United States to recover claims in their favor, and while that policy is pursued, a limitation upon the time within which a party charged with liability to

the United States would be unjust and unreasonable. In any event, if it had been the intention of Congress to limit the time within which an officer might proceed in the Court of Claims to have his accounts adjusted, would it not have provided in the law that he should proceed within a certain period after the time that his right to relief from responsibility accrued?

4. The evil sought to be remedied by a statute and the general purpose of a law should have great weight in its construction. In this case the evil sought to be remedied was, the *ex parte* manner of proceeding to obtain relief in the vast number of cases of this class pending before Congress, and the delay and difficulty in so large a body of obtaining relief at all, and discriminating between the meritorious and unmeritorious cases. To vest the power to determine this class of claims in the accounting officers would be to continue the *ex parte* method of examination and determination. Hence Congress has left the authority of the accounting officer where it stood as to examination and determination, and required of them simply to be governed in all this class of cases by the judgment and decree of the Court of Claims, and vested in that court jurisdiction to hear evidence and determine the question of responsibility for the guidance and in aid of the accounting officers, and hence this remedy is available to such an officer as long as his accounts are opened and unsettled. And the United States have the right to say just when they shall be closed, and hence the right to say when an officer must proceed to obtain relief from *nominal* responsibility.

The statute proceeds upon the theory that although there may be nominal responsibility and liability there may be none in fact or equitably. Hence, in this view, there is no claim by one party against the other at all—and the proceeding is not adversary as to any claim, but simply as to the right of the officer to be allowed a certain sum in the settlement of his accounts, and as long as the right to settlement exists the right to the benefit of this proceeding exists. There is no *claim* against the United States, and hence nothing upon which the

Statute of Limitations as it stands can operate. There is simply a claim to be relieved from responsibility, which Congress has provided that a certain tribunal in the judicial department shall pass upon, while certain other officers of the executive department shall pass upon all other accounts, while they must submit to the action and judgment of the judicial tribunal in this one class. Both these officers of the executive department and the tribunal of the judicial department may be passing upon these different classes of accounts of the same officer at the same time, and for the same purpose, to relieve the officer from nominal responsibility, and there can be no reason for applying a statute of limitations to one department that is not applied to the other.

5. Upon this question of limitations this case falls wholly within the rule established by the Supreme Court, in the case of the United States vs. Clarke, 96 United States, pp. 43-44, viz.: "That, until the accounting officers of the treasury had refused to recognize the sum lost as a valid credit in the settlement of his accounts, there was no occasion to apply to the Court of Claims; and the statute, if applicable to this class of cases at all, did not begin to run until then." For no accounting officer of the treasury has refused to allow him this $500.00, and the accounting officers of the Paymaster General's office had advised him that he should have every assistance in their power to effect his release from the accidental loss, when the time came; and that in this respect he should not be prejudiced by the transfer of all funds appearing to be in his hands to his chief paymaster.

The judgment of the Court of Claims should be affirmed:

1. As within the rule laid down in Clarke's case.

2. Because the six years' limitations is applicable only to claims against the United States, and not to claims for relief from responsibility in settlement of final accounts, whether the settlement is proceeding in the treasury or in the Court of Claims.

SANBORN & KING,
Attorneys for Respondent.

APR 8 1882
JAMES H. McKEEN

In the Supreme Court of the United States.

THE UNITED STATES
v.
SMITH.
} No. 287.

BRIEF FOR THE UNITED STATES.

In the Opinion of the learned court below, the facts in this case (stated at large in *Findings*, folios 9, &c.) are thus briefly given:

> This is a suit brought by a paymaster in the Army for relief under the disbursing officers' act (Rev. Stat., sections 1059, 1062), in regard to a package of government funds lost without fault or negligence on his part, but for which he has been held responsible by the Paymaster-General. The loss occurred on the 25th of June, 1869; the claimant was ordered to make good the loss out of his own funds on the 13th July, 1871; and he did so on the 20th December, 1871. But this suit for relief was not brought until the 18th April, 1878.

This case, therefore, differs materially from that of Clark (94 U. S., 74, and 96 U. S., 37), for in the latter case (see 94 U. S.) suit was brought April 12, 1873, upon a loss which had happened April 6, 1865, but which had not been ordered to be made good by Clark at the Treasury until November 6, 1871, and the question was

whether the statute of limitations began to run from the time of the loss incurred, or from that at which the claim to be credited therefor was finally rejected.

This court held substantially (96 U. S.) that so long as the case was one in which virtually the United States were *actores* and the officer *reus* in adjusting the loss, the statute did not run, as that would not be a case of "a claim" within the meaning of section 1069 of the Revised Statutes.

In Clark's case the United States were not interested to question the right of the officer to *waive* the "*claim*," occasioned by his having *paid* the money into the Treasury, and *bring suit upon the special cause of action* given by the act of May 9, 1866 (14 Stat., 44, and Rev. Stat., secs. 1059, 1062), for in either case the statute of limitations would not apply. But here, where the "claim" is barred, *the incidental right* of correcting an item in an account, which if corrected would avoid the statute upon *the main question*, must itself be barred: Accessorius sequitur, non ducit, &c.

And such is the course of reasoning in the last paragraph of the Opinion of the court in 96 United States Reports.

I submit, therefore, that the Court of Claims erred in holding that the statute of limitations does not bar this action.

S. F. PHILLIPS,
Solicitor-General.